



FREDERICK COUNTY BOARD OF APPEALS

JULY 27, 2023

TITLE: QLoop Communications Services, LLC
Activity in the FEMA Floodplain

CASE NUMBER: B-23-04 (B274872)

REQUEST: Requesting approval of a Special Exception to allow Activity within Floodplain District under Sec.1-19-9.110 and Sec 1-19-9.120 Procedures for Activities within the FEMA Floodplain. There are three sites associated with this application. (Exhibits 1 thru 7)

PROJECT INFORMATION:

ADDRESS/LOCATION: Multiple Sites
TAX MAP/PARCEL: Multiple Sites
ZONE: Agricultural/Resource Conservation
REGION: Brunswick
WATER/SEWER: N/A – N/A
COMP. PLAN/LAND USE: Agricultural and Resource Conservation

APPLICANT/REPRESENTATIVES:

APPLICANT: Jeff Schamber (Telcon Services - contractor for QLoop Communications Services, LLC)
OWNER: Potomac Edison, (First Energy is P.E. Parent Company), John and Lori Sewell (Sites 2&3)
ENGINEER: N/A
ARCHITECT: N/A
ATTORNEY: N/A

STAFF: Michael Paone, Zoning Planner

RECOMMENDATION: Staff has no objections to this request for a Special Exception seeking the approval of the proposed Activity within a Floodplain District under Sections 1-19-9.110 and 1-19-9.120 of the Frederick County Zoning Code.

EXHIBITS:

Exhibit #1: QLoop Area Plan-3 areas of Activity in the Floodplain District
Exhibit #2: Segment 1
Exhibit #3: Segment 1
Exhibit #4: Segment 2
Exhibit #5: Segment 15
Exhibit #6: Segment 16
Exhibit #7: Segment 16
Exhibit #8: Telcon Statement RE: Floodplain Comments Segment 15

Background:

Telcon Services ("Telcon"), on behalf of QLoop Communications Services, LLC ("QLoop"), requests permission to place conduit, fiber, and hand holes below grade through Frederick County floodplains, wetlands, and flooding soils as part of the construction to place a 42-mile fiber ring from a datacenter campus in Frederick County, Maryland (the "Project").

The Project is underway in upland (non-floodplain) areas and has secured the required authorizations from the Maryland Department of the Environment ("MDE") and the United States Army Corps of Engineers ("USACE") for activities within FEMA designated special flood hazard areas. Permanent project installations within floodplains will be entirely below surface grade, but minimal temporary disturbance will occur in limited areas, and the surface elevation within these areas will remain the same pre- and post-installation.

A professional engineer has reviewed Project plans and provided a letter documenting that the temporary installation activities within the floodplain will not permanently change soil conditions, slope contours, or result in the loss of net valley storage within a FEMA designated floodway or floodplain. **(Exhibits 1 thru 7)**

General Criteria – Special Exception § 1-19-3.210:

- (A) An application for a special exception may be made only by persons with a financial, contractual or proprietary interest in the property for which a special exception is requested.

This request is being made by Telcon Services, contractor for QLoop Communications Services, LLC, which is the entity with a contractual interest in the affected property.

- (B) A grant of a special exception is basically a matter of development policy, rather than an appeal based on administrative error or on hardship in a particular case. The Board of Appeals should consider the relation of the proposed use to the existing and future development patterns. A special exception shall be granted when the Board finds that.

- (1) The proposed use is consistent with the purpose and intent of the Comprehensive Development Plan and of Chapter 1-19 of the Frederick County Code; and

The Applicant states that the proposed use is consistent with the existing and future development patterns of this area, as the existing land use is a utility corridor, and it will continue to be used as a utility corridor.

- (2) The nature and intensity of the operations involved in or conducted in connection with it and the size of the site in relation to it are such that the proposed use will be in harmony with the appropriate and orderly development of the neighborhood in which it is located; and

The Applicant states that the nature and intensity of the operations involved with the proposed use will be in harmony with the appropriate and orderly development of the neighborhood. The proposed Project places fiber optic cable within existing powerline utility rights of way, which pass through agricultural areas that are continuously disturbed by ground cultivation.

- (3) Operations in connection with the special exception at the proposed location shall not have an adverse effect such as noise, fumes, vibration or other characteristics

on neighboring properties above and beyond those inherently associated with the special exception at any other location within the zoning district; and

The Applicant states that the operation of the fiber optic cable will have no adverse effect on neighboring properties as it is a subsurface and silent utility. Temporary construction impacts associated with installation of the cable will be of no greater or lesser magnitude than the existing operations required to maintain the power line infrastructure or cultivate and harvest the fields.

- (4) Parking areas will comply with the off-street parking regulations of Chapter 1-19 of the Frederick County Code and will be screened from adjoining residential uses, and the entrance and exit drives shall be laid out so as to achieve maximum safety.

The Applicant states that this is not applicable, the proposed use and operation will not require parking areas. Entrance and exit drives have already been established by agreements with Potomac Edison and the other property (or easement) owners.

- (5) The road system providing access to the proposed use is adequate to serve the site for the intended use.

The Applicant states that the operation of the proposed fiber optic cable will require negligible vehicular access. Only occasional service vehicles will be required to access the line. The existing road system which currently provides adequate access and safety for the service of the power lines and farms will be sufficient for the operation of the fiber optic cable as well.

- (C) In addition to the general requirements listed above, uses requiring a special exception shall be subject to the specific requirements for each use outlined in §§ [1-19-.320](#) through [1-19-8.355](#) of this Code.

The Applicant states that that they understand this requirement.

- (D) A special exception approval may be granted in accordance with the general and specific requirements enumerated in this section. The Board of Appeals may, in addition to other requirements imposed under Chapter 1-19 of the Frederick County Code and is hereby authorized to add to the specific requirements any additional conditions that it may deem necessary to protect adjacent properties, the general neighborhood, and its residents or workers. Violation of such additional conditions, when made a part of the terms under which the special exception permit is granted, is a violation of Chapter 1-19 of the Frederick County Code and may be grounds for termination of the special exception.

The Applicant states that that they understand this requirement.

- (E) The Board of Appeals shall not grant a special exception unless and until:
- (1) A written application for a special exception is submitted indicating the section of Chapter 1-19 of the Frederick County Code under which the special exception is sought and stating the grounds on which it is requested; and
 - (2) A public hearing has been held; and the Board had made a finding of fact that the special exception requested meets the general and specific requirements outlined in this section.

- (F) The grant of special exception may include approval of customary incidental accessory uses as reviewed and approved by the Zoning Administrator.

Staff notes that there are no accessory uses are proposed as part of this application.

- (G) No use or activity permitted as a special exception shall be enlarged or extended beyond the limits authorized in the grant of special exception. All enlargements, extensions, and changes in use shall require grants of special exception, as in the case of an original petition.
- (H) If a grant of special exception is denied, no new petition for the denied use on the same property shall be accepted by the Board of Appeals for 1 year after the date of denial of the petition.
- (I) A decision of the Board of Appeals granting a special exception will be void 5 years from date of approval by the Board of Appeals unless the use is established, a building permit is issued, construction has begun, or final site development plan approval has been received in accordance with the terms of the decision. Upon written request submitted to the Zoning Administrator no later than 1 month prior to the expiration date and for good cause shown by the applicant, a 1-time extension may be granted by the Zoning Administrator for a period not to exceed 6 months.

The Applicant states that that they understand the requirements referenced in subsections (E) through (I) above.

§ 1-19-9.120. PROCEDURES FOR ACTIVITIES WITHIN THE FEMA FLOODPLAIN.

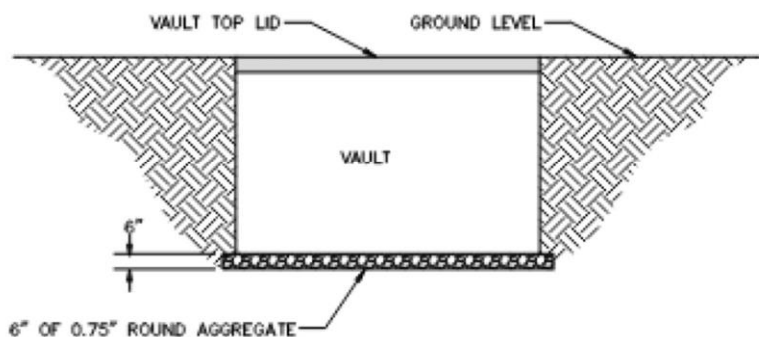
- (A) The Board of Appeals shall review the following activities within the FEMA floodplain: substantial improvements, substantial improvements due to existing structures substantial damage, replacement or relocated dwelling units (including manufactured homes), the addition of accessory buildings, the expansion or replacement of an existing nonconforming use, or development of an existing parcel of record lying totally within the FEMA floodplain. Applications to allow new structures or fill to be placed in the floodway shall not be considered. The Board of Appeals may grant an application for approval for activity within the FEMA floodplain when the Board specifically finds that:
- (1) Failure to grant the application for approval would result in exceptional hardship to the applicant; and

The Applicant states that the scope of the Project is a \$100 million build that traverse through Frederick County, Montgomery County, and Loudoun County in Virginia. These areas are pertinent to the build and continuity of the Project.

- (2) The granting of an application for approval would not increase flood heights, add threats to public safety, result in extraordinary public expense, create nuisances, cause fraud or victimization of the public or conflict with existing local laws or ordinances; and

The Applicant states that a review of all Project designs and specifications has determined that the Project will not permanently change soil/slope contours or result in any permanent net fill within a floodway or floodplain. All permanent structures will be below the ground surface and the floodplain/floodway. This earthwork approach will result in a No-rise to floodwaters within the floodways and floodplains traversed by the Project. It is the Applicant's Engineer of Record's assessment that this application will not increase flood heights, add threats to public safety, result in extraordinary public expense, create nuisances,

cause fraud or victimization of the public or conflict with existing local laws or ordinances. Below is a profile of the proposed utility vaults.



NOTES:

1. VAULTS SHALL BE PLACED A MINIMUM OF 10" SEPARATION UNLESS APPROVED BY ENGINEER PRIOR TO INSTALLATION.
2. VAULTS SHALL BE INSTALLED TO EXISTING GRADE AND AS LEVEL AS POSSIBLE.
3. THE VAULTS WILL BE INSTALLED PARALLEL AND SQUARED UP WITH STREETS AND SIDEWALKS.
4. THE BOTTOM OF THE PIT SHALL BE COMPACTED TO 95% TO ALLOW FOR A SOLID BASE PRIOR TO THE VAULT SET.
5. THE BACKFILL AROUND THE VAULT WILL BE NATIVE SOIL AND COMPACTED TO 95% AFTER EVERY 6".
6. THE BOTTOM OF THE PIT SHALL HAVE AT LEAST 6" OF 0.75" ROUND AGGREGATE TO ALLOW FOR DRAINAGE AND A SOLID BASE PRIOR TO THE SETTING OF THE VAULT.

VAULT INSTALLATION
NOT TO SCALE

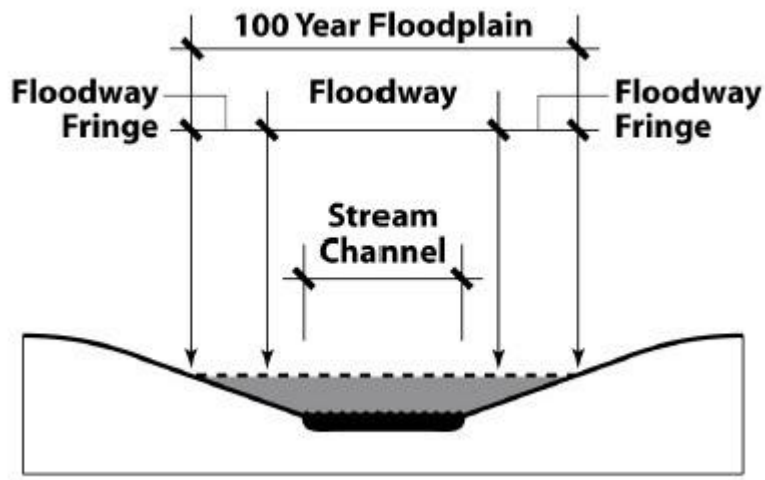
- (3) The granting of an application for approval would not allow new structures or fill to be placed in the floodway; and

The Applicant states that the Project involves no permanent cut or fill in the floodway. The structures are all below ground and satisfy the FEMA ASCE 24-14 regulations, (See Exhibit #6).

Per Section 1-19-11.100 of the Frederick County Zoning Ordinance:

FLOODWAY. The channel of a watercourse and adjacent land area required to discharge the waters of the 100-year flood without increasing the water surface elevations above existing 100year flood conditions more than a specified height.

FLOODWAY FRINGE. Those portions of land subject to inundation by the 100-year flood, lying beyond the floodway (where a floodway has been determined) or in areas where detailed study data, profiles, and 100-year flood elevations have been established. The floodway fringe appears on the flood boundary and floodway map and flood insurance rate maps.



- (4) The granting of an application for approval is the minimum necessary considering the flood hazard to provide relief and that public funds may not be available to mitigate the results of the approval; and

The Applicant states that the Project will not result in the need to use public funds for mitigation or provide relief since all hand holes (structures) would be buried below ground and there will be no change in permanent net fill.

- (5) All new structures and substantial improvements to existing structures will have the lowest floor elevated to the greatest extent possible with respect to the 100-year flood elevation, but at least to the Flood Protection Elevation, and a FEMA elevation certificate filed. In addition, all structures, including manufactured homes, must be firmly anchored in accordance with acceptable engineering practices (i.e., FEMA publication 85 "Manufactured Home Installation in Flood Hazard Areas"); and

The Applicant states that no manufactured homes will be installed, and all structures are below ground level. There will be no substantial improvements to existing structures, and the Applicant has considered the 100-year flood elevation. There will be no change in elevation due to the placement of the below ground structures.

- (6) The granting of a permit by the Maryland Department of the Environment if located within a FEMA floodplain; and

The Applicant states that that they understand this requirement and has stated that they have received approval from MDE as well as the USACE. MDE Permit 21-NT3181/202161612 was granted on June 16, 2022.

- (7) The action is duly recorded with the deed of the property on which the application for approval is granted prior to the issuance of a building permit. Any expense incurred by the recording is the responsibility of the applicant.

The Applicant states that that they understand this requirement.

- (8) The Board of Appeals shall not grant approval of the above activities for lots containing floodplain created after June 6, 1989.

The Applicant states that that they understand this requirement. Staff notes that these easement areas appear on the 1967 Tax Maps and adhere to the above requirement.

(B) The Board of Appeals will notify the applicant of approval in writing through the Zoning Administrator. The decision of approval and findings shall include the notification that:

- (1) The issuance of a decision to allow construction of a structure below the 100-year flood level will result in increased premium rates for flood insurance.

The Applicant states that that they understand this requirement.

- (2) Such construction below the 100-year flood level increases risks to life and property.

The Applicant states that that they understand this requirement.

(C) The Board of Appeals will maintain a record of all decisions, including justification for their issuance,

(D) and the Zoning Administrator will report such decisions in the county biennial reports submitted to the Federal Emergency Management Agency.

The Applicant states that that they understand this requirement.

1-19-3. 210.I: A decision of the Board of Appeals granting a special exception will be void 5 years from the date of approval by the Board of Appeals unless the use is established, a building permit is issued, construction has begun, or final site development plan approval has been received in the accordance with the terms of the decision. Upon written request submitted to the Zoning Administrator no later than 1 month prior to the expiration date and for good cause shown by the Applicant, a time extension may be granted by the Zoning Administrator for a period not to exceed 6 months.

Exhibit #1 QLoop Area Plan - 3 areas of Activity in the Floodplain District

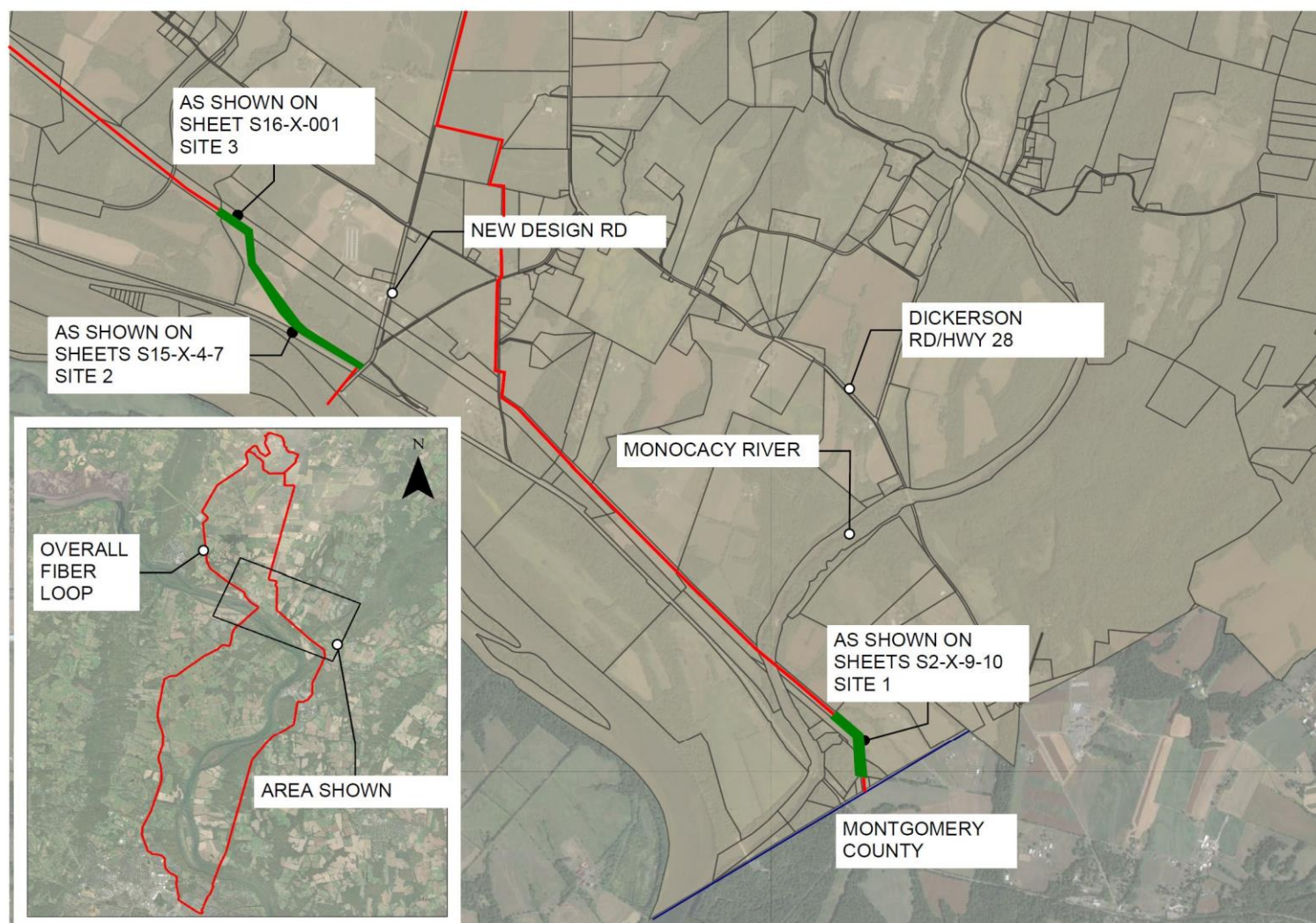


Exhibit #2: Segment 1



Scale: 1"=500'

- Wetlands and Waterways
- FEMA Floodplain
- Floodplain Soils Per Frederick County

Segment 1

Exhibit #3: Segment 1

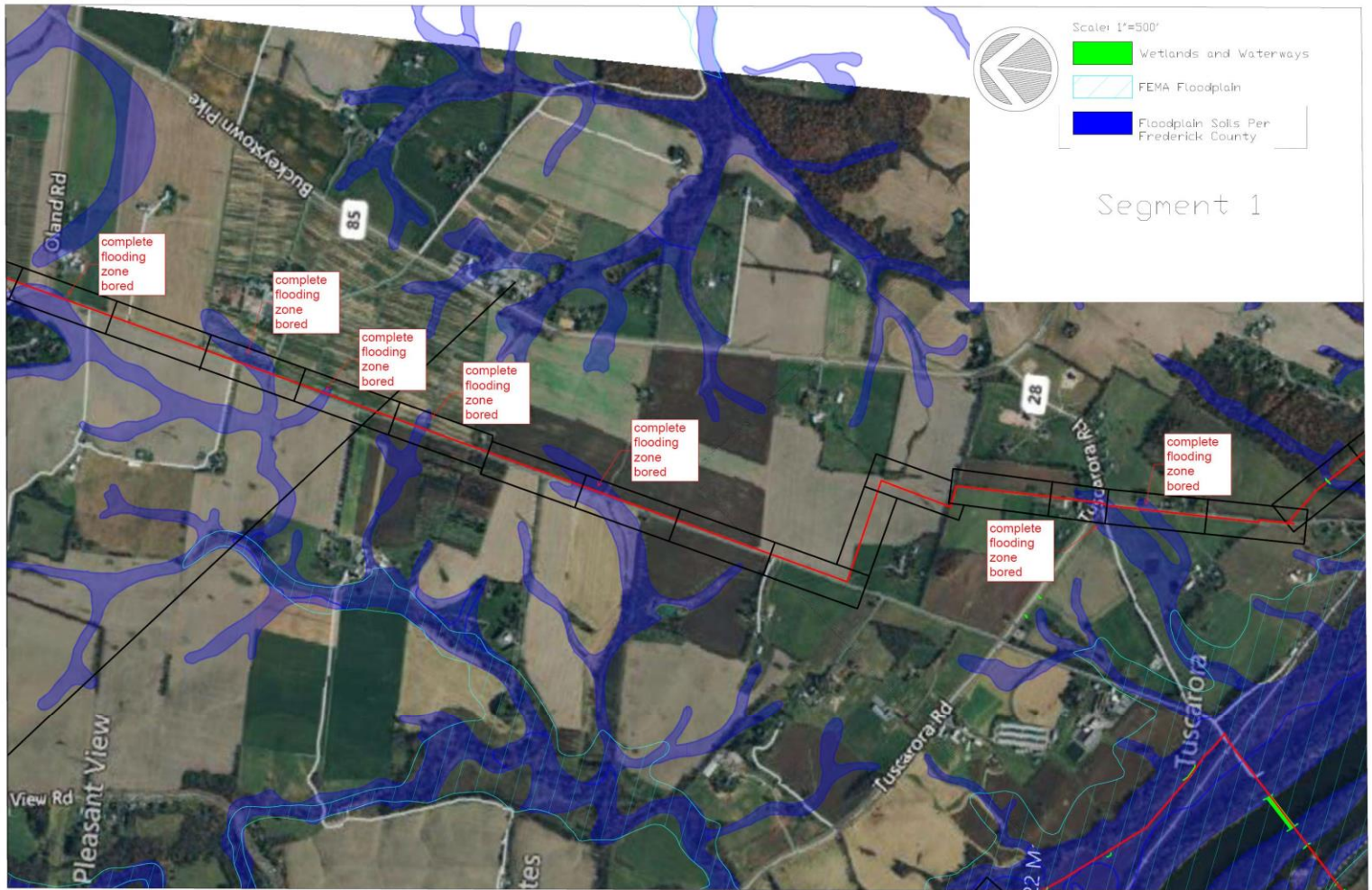


Exhibit #4: Segment 2

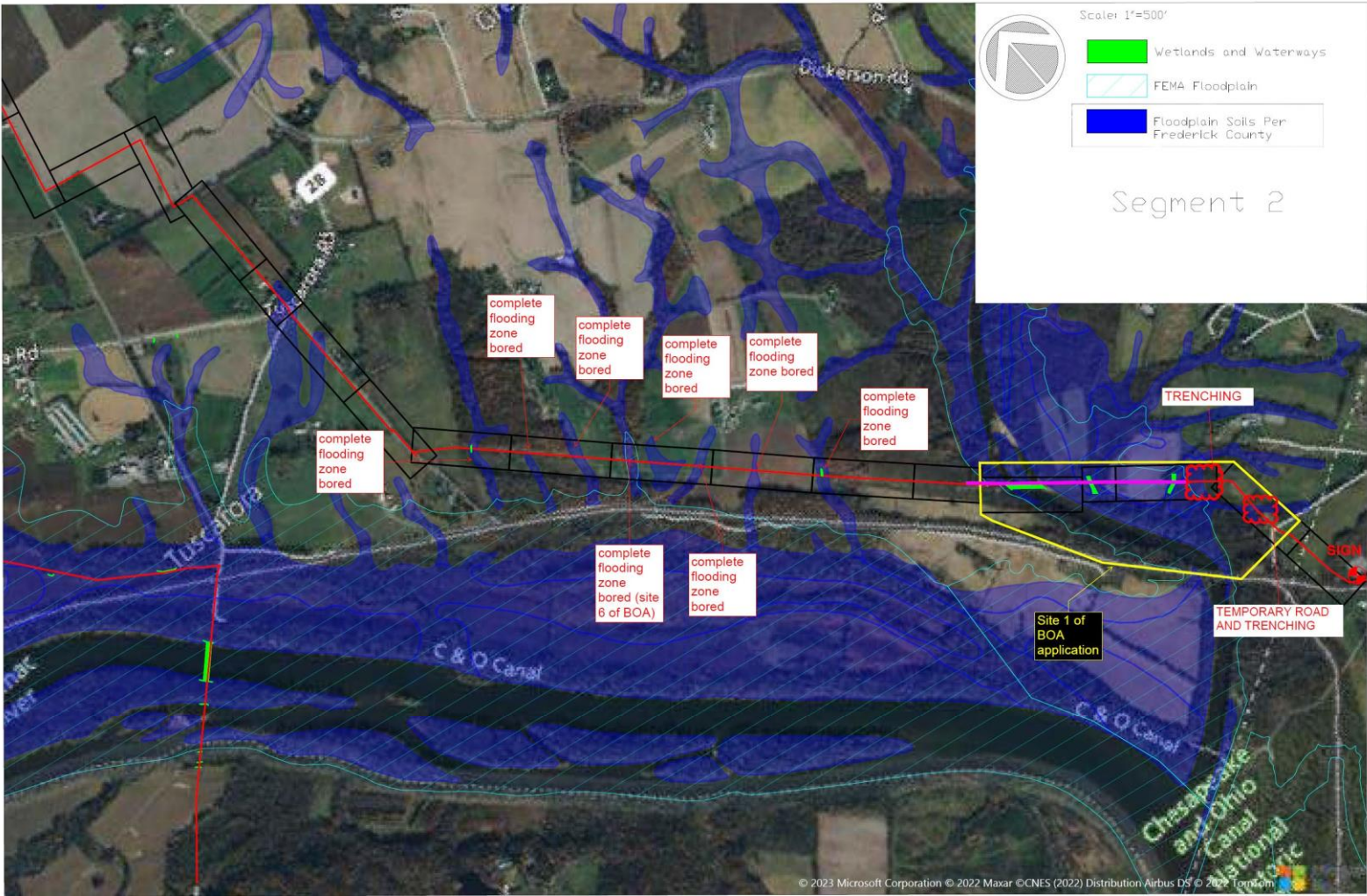


Exhibit #5: Segment 15

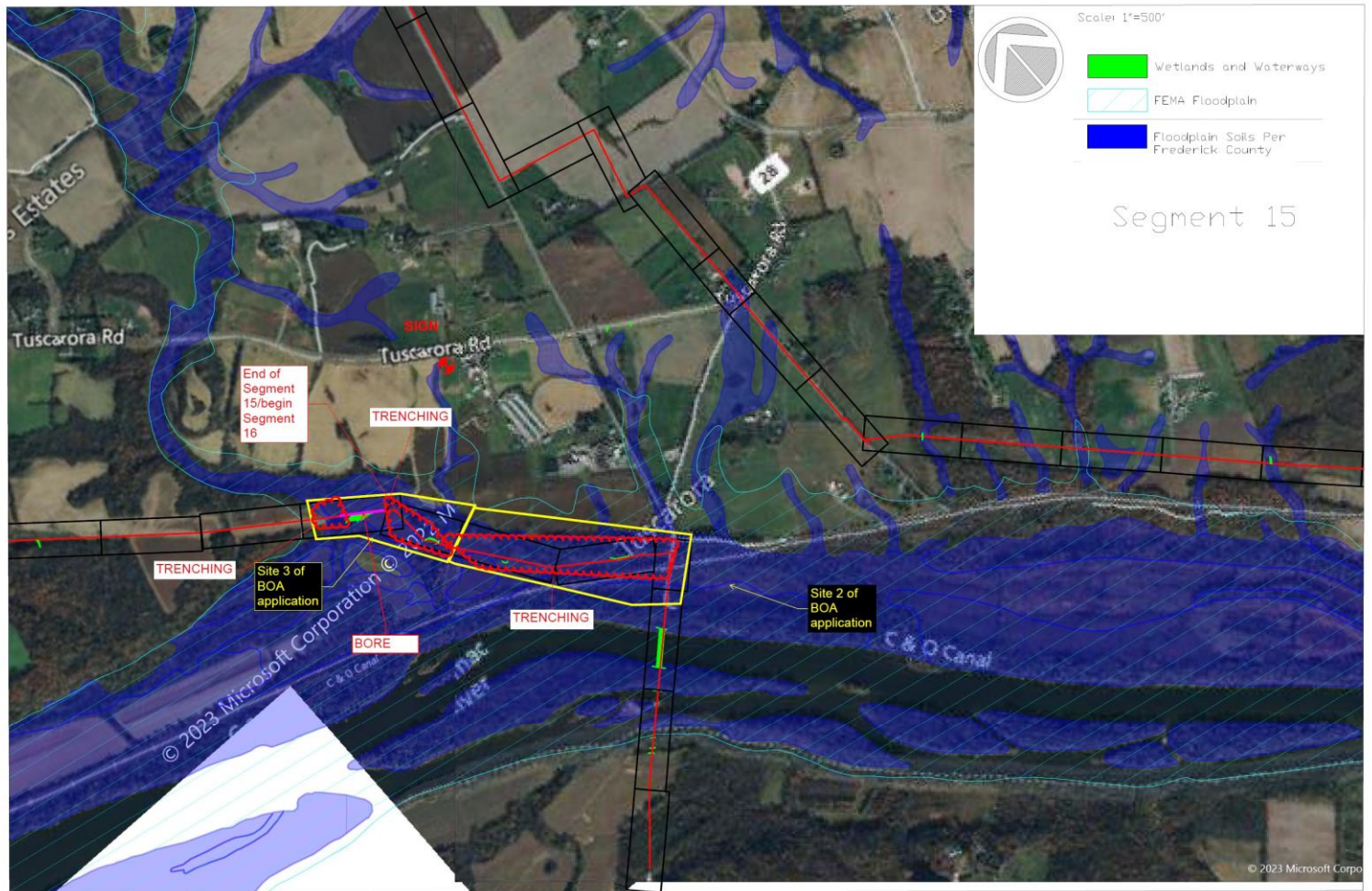


Exhibit #6: Segment 16

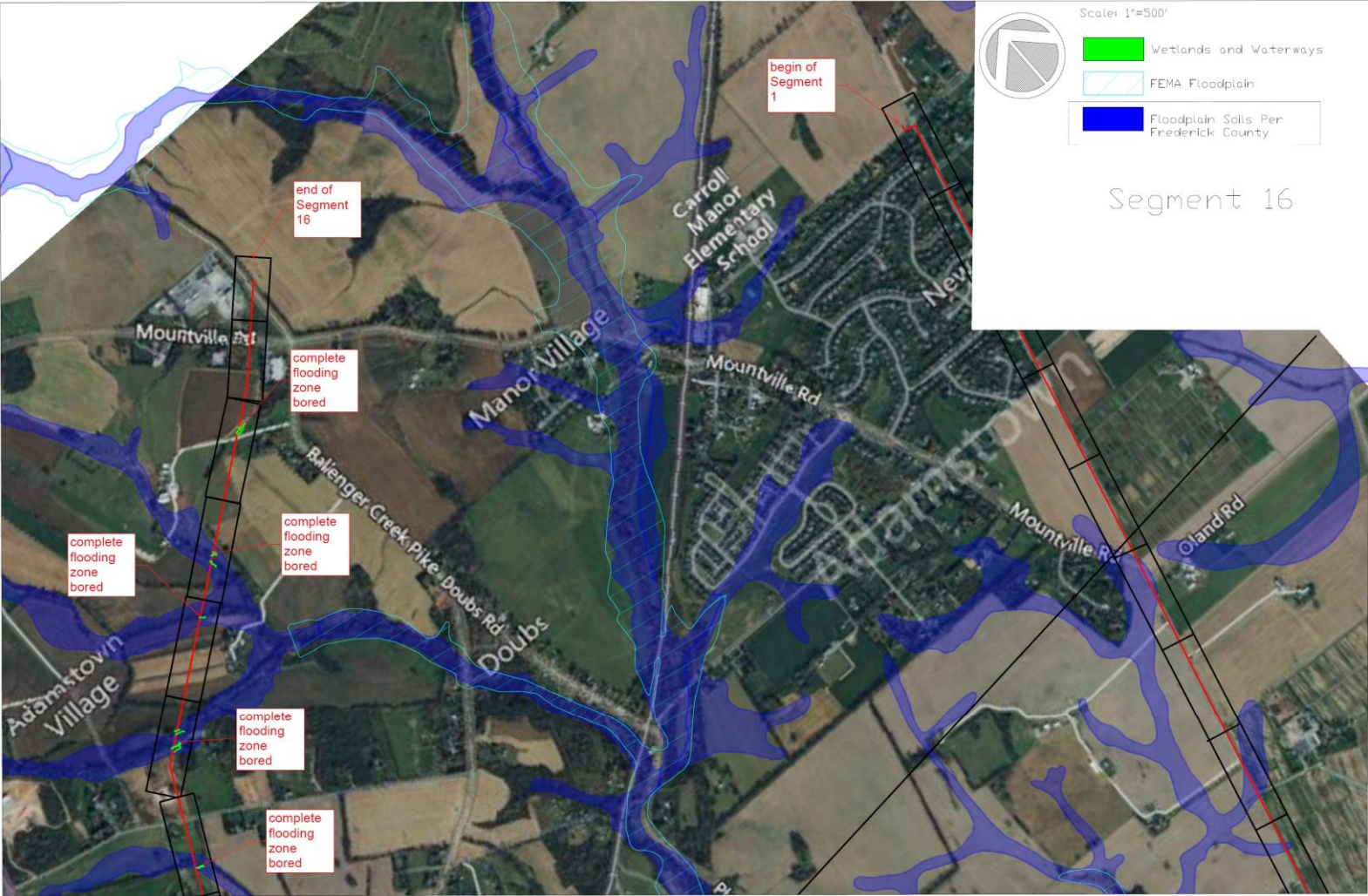


Exhibit #7: Segment 16

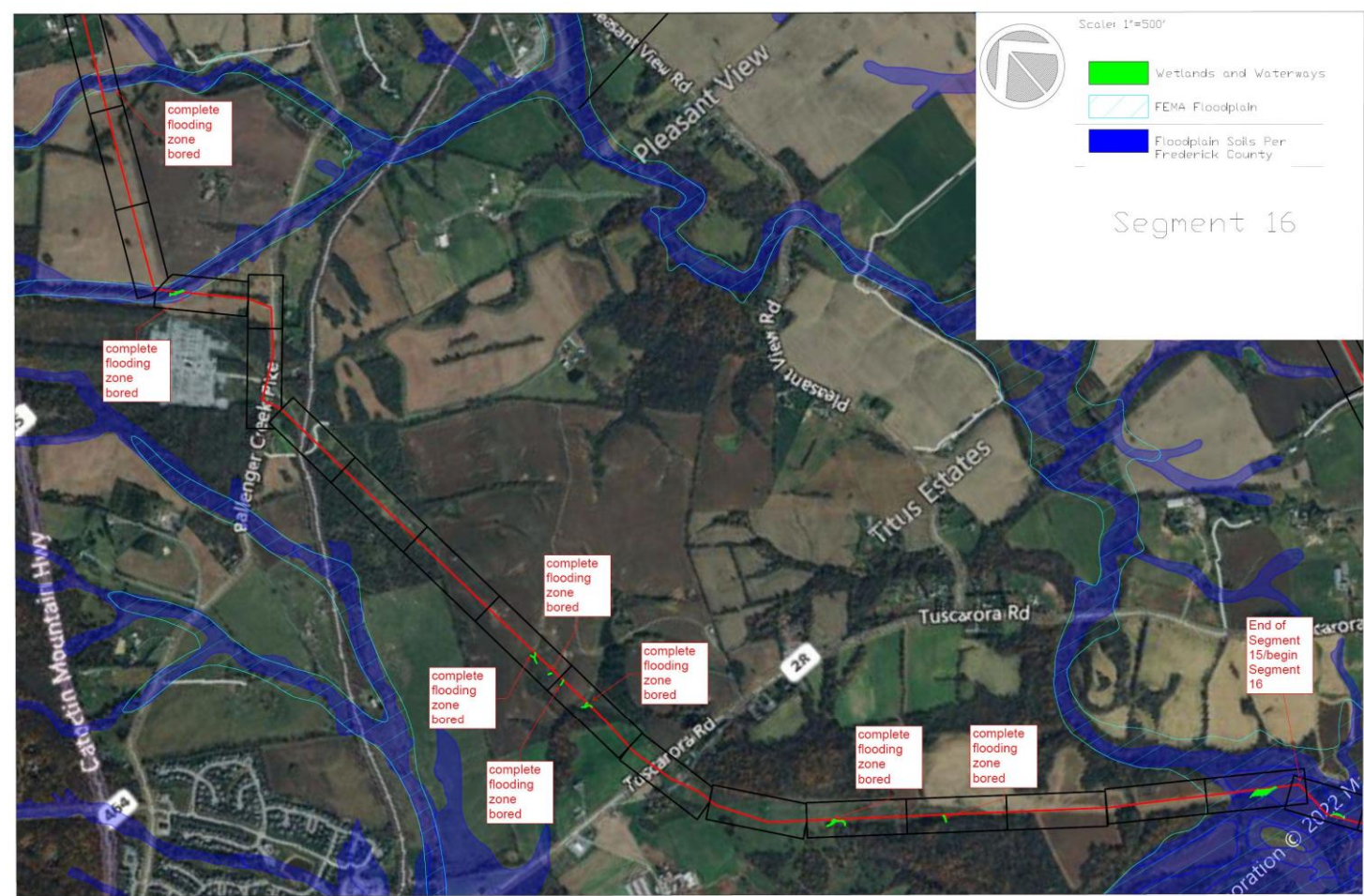


Exhibit # 8 Telcon Services Letter



09/19/2022

Ashley M. Moore

Senior Planner
Frederick County Division of Planning and Permitting
Department of Development Review and Planning
30 North Market Street
Frederick, MD 21701

Telcon Services, LLC. Is submitting the following statement regarding the floodplain comments for Project Sage Phase 15.

A review of all project designs and specifications has determined that the project will not permanently change soil/slope contours or result in any permanent net fill within a floodway or floodplain. Project sage involves no permanent cut or fill. All trenches and pits will be backfilled with native material or imported aggregate; any surplus material will be hauled off to an approved upland disposal location. Any temporary staging areas within the floodplain will be removed. Slope contours intersected by trenching will be restored to match preconstruction conditions and the surrounding terrain. This earthwork approach will result in a No-rise to floodwaters within the floodways and floodplains traversed by the project.

Sincerely,

Jeff Schamber

Jeff Schamber
Project Manager
Telcon Services, LLC
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